

crime. The ICC serves as a danger to the security of Israel because of some members of the international community's stated opposition to the legitimacy of that state.

Mr. Chairman, I strongly urge the passage of this amendment.

The creation of a permanent, supranational court with the independent power to judge and punish elected leaders represents a decisive break with fundamental American ideals of self-government and sovereignty. It would constitute the transference of authority to judge the actions of U.S. officials, away from Americans to an unelected and unaccountable international bureaucracy.

Certain United Nations' members have a long history of anti-Israeli rhetoric and activity. In October of 2000, for example, the U.N. Commission on Human Rights condemned Israel for supposedly causing the recent violence in the Middle East, going so far as to accuse it of "war crimes" and "crimes against humanity." It is possible, perhaps likely, that these same countries would use the ICC to further their own anti-Israel agenda.

I strongly urge the passage of the American Servicemembers' Protection Act amendment to protect the notion of National sovereignty in America and around the world.

Mr. LANTOS. Mr. Chairman, I reserve the balance of my time.

Mr. DELAY. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New Jersey (Mr. SMITH).

(Mr. SMITH of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. SMITH of New Jersey. Mr. Chairman, I thank my friend, the gentleman from Texas (Mr. DELAY), for yielding me this time.

Mr. Chairman, I rise in strong support of the DeLay amendment. Mr. Chairman, let me just read a statement: "As it currently stands, the Rome Treaty could expose service members and the government officials of nonparty states to criminal liability based on politically-motivated charges brought by other states that object to the nonparty state's international policies."

Mr. Chairman, that statement was made last year by Secretary of Defense Cohen on behalf of the Clinton administration. I think Members do not fully realize that this process has gone on for years. We have held hearings in the full International Relations Committee on this. There are serious flaws. Just as we saw with the U.N. Human Rights Commission, rogue states are now in charge of and acting as the "conscience of humanity," to quote the chief of that commission. We are talking about the Sudan and China, and countries like Cuba. They now will sit with the black robes on and will judge our peacekeepers.

I support ad hoc tribunals, but this grant of authority in the Rome Treaty goes far beyond that.

Mr. Chairman, I rise in support of the amendment offered by my good friend, TOM DELAY. I was an original cosponsor of the American Servicemen's Protection Act introduced by Mr. TOM DELAY in the last Congress.

This important amendment would prohibit U.S. cooperation with the International Criminal Court (including restrictions on U.S. military participation in UN peacekeeping operations and the transfer of U.S. classified national security information, and the provision of U.S. military assistance, to the Court). The amendment also authorizes the President to use all means necessary to bring about the release of U.S. military personnel and certain other persons held captive by or on behalf of the Court.

I am reminded of the raging debate which occurred at the OSCE Parliamentary Assembly meeting last year regarding the International Criminal Court. Our European allies were lambasting the United States, among others, for not supporting the Rome Statute of the ICC. The final text of the OSCE PA resolution in fact called on "all member States to ratify the Rome Statute of the future International Criminal Court without delay." Members of the U.S. delegation to the OSCE PA (which I led) expounded on the provisions which were most problematic. In the waning days of the Clinton administration, he did sign the Rome Statute. I would warn the Bush administration about the serious pitfalls of the ICC, and I would encourage the President to not seek ratification of the Treaty.

At the end of World War II, many people urged the creation of a permanent and independent international war crimes tribunal as a mechanism to deter future violations and to punish those responsible for committing systematic war crimes, crimes against humanity, and genocide. It was envisioned as a permanent court in The Hague with the authority to prosecute suspected perpetrators of war crimes. The statute that ultimately emerged from the Rome negotiations in 1998, however, includes provisions which I believe would create unacceptable risks for the United States.

The subject matter jurisdiction of the Court includes crimes against humanity, war crimes, genocide, and "aggression." But during the negotiations on the treaty, negotiators were unable to agree on a definition of "aggression." This is particularly significant because the Nuremberg Tribunal used the term "war of aggression" in its charges against Nazi Germany, not the term "aggression." In fact, acts of aggression by states already fall within the mandate of the U.N. Security Council and it is completely unclear what will be considered acts of aggression by individuals. States that have already ratified this treaty have bought a pig in a poke.

The jurisdiction of the ICC can extend to citizens of states which are not party to the Treaty. This is particularly troublesome when you consider the possibility of U.S. military personnel stationed in a country party to the ICC—or serving on a UN peacekeeping mission—being subject to the investigation and prosecution of the ICC even though the U.S. has not, and hopefully will not, become a party to the Treaty. This, in fact, is the provision to which the amendment being offered by Mr. DELAY is directed.

Article 120 of the Statute forbids reservations to the ICC Treaty. Thus, the United States or any other country would have to either accept or reject the treaty in its entirety. In light of the problems I have alluded to, I believe that rejecting the ICC in its entirety is the only reasonable course open to the United States at this time.

During the negotiations on the ICC Treaty, the effort by the United States to limit the ap-

plication of the Court's jurisdiction over non-States Parties was squelched by the successful passage of a non-action vote requested by Norway. The United States also sought to curb the broad powers of the Court to prosecute the military personnel of UN Members States which are not party to the ICC Treaty but we were rebuffed.

Mr. Chairman, let's consider for a moment the potential effects of the International Criminal Court should 60 States ratify the Treaty and should the ICC have the force of international law. Some supporters of the ICC have belittled concern that the United States—or other countries, for that matter—might find itself the target of politically driven prosecutions. But consider, for a moment, the reaction in some quarters to the use of force by NATO against Serbia in 1999. Serbia is suing eight NATO countries before the International Court of Justice right now for their participation in the NATO campaign; there are also charges by Serbian citizens that have been brought against 15 NATO countries before the European Court of Justice. More troubling are the accusations that were leveled by a group of lawyers from several countries who sought to have some 60 government officials from NATO countries, including NATO's Supreme Commander Gen. Wesley Clark, charged by the International Criminal Tribunal for the Former Yugoslavia. The accusations included "willful killing, willfully causing great suffering or serious injury to body or health, extensive destruction of property, not justified by military necessity, and carried out unlawfully and wantonly, employment of poisonous weapons or other weapons to cause unnecessary suffering."

Human rights organizations raised concerns about NATO's attack on TV and radio transmission facilities, dropping cluster bombs and destroying power plants inside Serbia. Others argued that NATO's rules of engagement, which called for pilots to fly high out of range of Serbian missiles, endangered civilians and were thus "clearly prohibited under international humanitarian law." Ironically, many of the same groups that had urged intervention to stop and prevent further atrocities in Kosovo quickly denounced NATO for its action. While I respect human rights groups that have raised legitimate questions about the conduct of the campaign, some NATO critics have clearly revealed a knee-jerk anti-American sentiment in their accusations. For the record, the Chief Prosecutor of the Yugoslav Tribunal considered the materials submitted to her regarding NATO actions and declined to pursue charges against any NATO officials.

Inevitably, if the U.S. assumes a leadership role in maintaining peace and security and promoting human rights around the globe, the enemies of peace, security and human rights will continue to seek ways to undermine our efforts. Unfortunately, the current ICC statute does not provide sufficient safe-guards against the initiation of politically motivated prosecutions.

The concerns raised by the United States regarding the Rome Statute are well-founded and I urge my colleagues to support fully the amendment offered by Mr. DELAY. This will help provide a modicum of protection for our men and women in uniform who may be serving on the territory of a country which has ratified the Treaty.